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Strengthening of the rule of law

Report of the Secretary-General

I. Introduction

1. At its fifty-second session, the General Assembly adopted resolution 52/125 of 12 December 1997, in which it affirmed that the Office of the United Nations High Commissioner for Human Rights remains the focal point for coordinating system-wide attention on human rights, democracy and the rule of law; welcomed the deepening of the ongoing dialogue initiated by the High Commissioner for Human Rights with other relevant bodies and programmes of the United Nations system with a view to enhancing system-wide coordination of assistance in human rights, democracy and the rule of law; and encouraged the High Commissioner to pursue that dialogue, taking into account the need to explore new synergies with other organs and agencies of the United Nations system with a view to obtaining increased financial assistance for human rights and the rule of law. At the conclusion of the resolution the Assembly requested the Secretary-General to submit a report to the General Assembly at its fifty-third session on the implementation of the resolution.

II. Assistance provided by the Office of the United Nations High Commissioner for Human Rights in the area of strengthening the rule of law

2. In accordance with General Assembly resolution 48/141 of 20 December 1993, resolution 52/125 and other relevant resolutions of the General Assembly, the United Nations High Commissioner for Human Rights has principal responsibility within the United Nations system for providing advisory services and technical and financial assistance with a view to supporting actions and programmes in the field of human rights, democracy and the rule of law, and for coordinating system-wide assistance in this field.

3. As noted in previous reports, the technical cooperation programme (hereinafter, "the programme") of the Office of the High Commissioner for Human Rights has been developed to respond to requests from Member States seeking to strengthen the rule of law and, thereby, to secure the effective enjoyment of all human rights. Programme content remains focused principally on the elements set out in the framework for strengthening the rule of law elaborated by the Secretary-General in his report to the General

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Assembly at its forty-ninth session, in 1994 (A/49/512, para. 5).

4. The number of States seeking assistance in fortifying and consolidating the rule of law is one indicator of the growing global realization of its importance. In 1998 there was a continuation of the trend of dramatic programme growth which has characterized this decade, as indicated by yet another consecutive increase in the number of activities implemented under the programme, which has grown from 2 in 1984; to 37 in 1989; 130 in 1994; 215 in 1995; 402 in 1996; and 483 in 1997. In the past year, the programme has carried out rule of law support activities in more than 50 countries and territories, among them: Albania, Argentina, Armenia, Bangladesh, Belarus, Benin, Bhutan, Botswana, Burundi, Cambodia, Cameroon, Ecuador, El Salvador, Equatorial Guinea, Gabon, Georgia, Guatemala, Guinea, Haiti, Honduras, Latvia, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritius, Mongolia, Morocco, Namibia, Nepal, Palestine, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Republic of Moldova, Russian Federation, Rwanda, South Africa, the former Yugoslav Republic of Macedonia, Togo, Uganda, United Republic of Tanzania, Viet Nam and Zambia. These national activities were complemented by more than 20 global and regional projects under the programme. Thus, demand by the governmental and non-governmental institutions of Member States remains high. Programme resources, on the other hand, have not kept pace with this demand, such that neither the allocation under the regular budget, nor voluntary contributions have proved sufficient to satisfy assistance requirements during the reporting period.

III. Programme content

5. The programme is aimed at assisting Governments, at their request, in promoting and protecting human rights at the national and regional levels. In particular, assistance is provided on incorporating international human rights standards into national laws, policies and practices and building national capacity and regional structures for the promotion and protection of all human rights, democracy and the rule of law. All assistance provided by the Office of the High Commissioner for Human Rights under the technical cooperation programme is based upon the international standards contained in the human rights instruments adopted by the United Nations and on international practice in applying those standards in all regions of the world. Programme activities are carried out within the context of national development objectives and coordinated United Nations system assistance in support of those objectives.

6. The programme offers a wide range of human rights assistance to requesting Governments, including: the creation and strengthening of national human rights institutions; human rights training and support to parliament, the judiciary, and police, military and prison officials; constitutional assistance; legislative reform and the administration of justice; the human rights aspects of free and fair elections; the promotion of human rights education, including curriculum development; and support to non-governmental organizations (NGOs) and civil society institutions. Expert advice and assistance is also available for specific human rights issues, such as the formulation and implementation of comprehensive human rights national plans of action, and compensating victims of human rights abuses.

IV. National human rights institutions

7. The components of the programme thus follow closely the elements of the 1994 framework (see para. 3) and are based upon the same broad institutional approach in contrast to other, more narrow rule of law programmes which, traditionally have concentrated efforts on the judiciary and its direct concomitants. The inclusion as a programme focus of independent national human rights institutions, such as human rights commissions and ombudsman offices (ibid., para. 5 (a) (vii) and (d)) is a case in point. The programme, and its national partners, have long recognized the potential valuable contribution of such institutions to the good functioning of the rule of law, complementing with specialized expertise and constitutionally mandated vigilance the crucial roles of the judiciary, the legislature, the executive and NGOs.

8. Activities carried out by the Office of the High Commissioner for Human Rights in support of national institutions can be broadly divided into two areas: the provision of practical advice and assistance to those involved in the establishment of new national institutions or the strengthening of existing ones; and facilitating international and regional meetings of national institutions. In the past year, for example, assistance for such meetings included regional forums in Asia and Africa and a global conference held in Mexico.

9. Establishing an appropriate constitutional or legislative foundation for any new national human rights institution is of primary importance as it is essential that the institution

be able to respond adequately to the needs of the community it is to serve. In recognition of the importance of the pre-establishment phase, the programme provided preliminary advice or assistance to a large number of countries currently considering or actually establishing a national human rights institution. Last year, those countries included Armenia, Bangladesh, Cambodia, Fiji, Georgia, Liberia, Malawi, Madagascar, Mauritius, Mongolia, Nepal, Papua New Guinea, the Republic of Moldova, Rwanda, Sri Lanka and Thailand.

10. Assistance is also provided to recently established national institutions. In South Africa, the Human Rights Commission is a central focus of the technical cooperation project of the Office. A substantial project of technical assistance to the Latvian Human Rights Office is currently being implemented. A needs assessment mission was fielded by the programme in advance of a comprehensive programme of support for the new Ugandan Human Rights Commission and a technical cooperation project has subsequently been prepared, in close consultation with the Commission. Advice and assistance has also been provided to the new Human Rights Commission in Zambia. Other national institutions which have worked in cooperation with activities sponsored by the High Commissioner include those in India, Indonesia, Palestine and the Philippines.

V. Programme methodology

11. All projects, whether directed to the judiciary, to prosecutors, to police or to a national human rights commission, are developed in close cooperation with the requesting Government and the United Nations agencies present in the country concerned. Assistance may take the form of expertise, advisory services, training courses, workshops and seminars, fellowships, grants and the provision of information and documentation.

12. Within this overall framework, determining particular programme content on a country-by-country basis is accomplished by application of a standard methodology, which is itself triggered by a formal request from a Government. The request is followed by a multiple-stage project cycle, the main phases of which are: (a) needs assessment, (b) project formulation, (c) project implementation, (d) project monitoring, (e) project evaluation and (f) project follow-up.

13. The needs assessment is a study of the country's particular institutional needs, priorities and capacities for human rights, democracy and the rule of law. Assessment teams meet with all interested parties, both governmental and non-governmental, in close cooperation with the United Nations Resident Coordinator, United Nations agencies and programmes, as well as local donors, and compile detailed information on current policies, legislation, and human and financial capacities in key areas. Needs assessments thereby ensure a clear understanding of government priorities, objectives, programmes and plans of action. The resulting report provides the framework for developing possible future technical cooperation activities to strengthen national efforts in identified areas and contribute to the achievement of national objectives, ensures coordination with existing or planned assistance from other donors and sometimes facilitates additional support from other international sources. Last year, such assessments were undertaken in Gabon, Mali and Panama, among others.

14. Following the needs assessment, the programme is usually requested to develop, in partnership with the Government, a project document focusing on the problems to be addressed through institution-building. The document describes the situation which required the development of a project and the reasons the project is initiated; outlines the plan of what will be done and what will be produced when and by whom; and assesses the situation that is expected to exist when the project ends. The project document is also a contract outlining the obligations of each partner in the project; provides the basis for accountability; includes a guide to planning and implementation; and provides the framework for evaluation and the criteria by which the success of the project will be assessed.

15. Project formulation is carried out in close consultation with the Government and other partners (both official and non-governmental) on the final design of the proposed project, including problem analysis and definition, the identification of the intended solution and a strategy for achieving it. The process also outlines the most appropriate inputs and implementation arrangements for the production of project outputs; the risks involved and how they can be avoided; and what financial resources are needed from the Office and the Government concerned. In the past year, project formulation missions were undertaken in Gabon, Lesotho, Madagascar, the Russian Federation, the former Yugoslav Republic of Macedonia, Uganda, the United Republic of Tanzania and countries of the former Yugoslavia.

16. Project monitoring is carried out throughout the life of all projects, sometimes including periodic monitoring missions from headquarters, where appropriate. The purpose of such missions is to record progress, to ensure efficient and effective project implementation, to identify any problems

with a view to adapting project activities accordingly and to adjust to new needs and conditions not foreseen at the design stage. In the past year, project monitoring missions were undertaken in Armenia, El Salvador, Palestine, Panama, Papua New Guinea, Paraguay, the Republic of Moldova and Togo.

17. The final phase of a project cycle is a terminal project evaluation. All evaluations are carried out by independent consultants, who assess the effectiveness, efficiency, and sustainability of the project activities and results. This process ensures that lessons learned are applied in the design and implementation of future projects, both in the country concerned and elsewhere. Last year, independent evaluations were carried out in connection with projects in Benin, Equatorial Guinea, Mongolia, Poland and the countries of the former Yugoslavia.

VI. Selected country examples

18. Illustrative of rule of law programme content are the Office's assistance projects for Burundi and Palestine (West Bank and Gaza Strip). In Burundi, the Office of the High Commissioner has been providing since 1996 a range of support for strengthening the rule of law, including-training for the armed forces in human rights and humanitarian law; development of a national human rights education curriculum; support for the building of the human rights promotional capacity of the media and local NGOs; and support for the strengthening of the judiciary in accordance with international human rights standards. Work is also under way to support the fight against impunity and to promote reconciliation by reinforcing the institutions of justice administration. The project also supports legal assistance and representation for victims and prisoners appearing before the Court of Appeals.

19. In the occupied West Bank and Gaza Strip, the Office has worked since 1994 to support the efforts of the Palestinian Authority in a broad range of rule of law development areas. Support activities are targeted to the development of national rule of law policy (including a national plan of action); strengthening of rule of law institutions (including attention to the human rights capacities of the Palestinian police and prison officials; the Palestinian Independent Commission for Citizen's Rights (PICCR), the Legislative Council and Palestinian NGOs); and the development and consolidation of the Palestinian laws themselves (including input on a new prison law, the draft Basic Law and others). The Office is working to these ends with official institutions of the Palestinian Authority, with Palestinian NGOs, with the Palestinian judiciary, PICCR and a host of other partners.

VII. Increasing system-wide coordination

20. In an effort to bridge the gap between the ever growing demands on the programme and the limited resources made available for its development and implementation, the High Commissioner for Human Rights, in the context of her programme for the integration of human rights throughout the work of the United Nations system, has pursued a policy of enhanced collaboration with other key United Nations actors.

21. In particular, the Office of the High Commissioner has deepened the ongoing dialogue with other United Nations entities through regular bilateral consultations and participated in each of the four executive committees of the policy coordination group of department heads and senior officials created by the Secretary-General to improve system-wide coordination, including the key substantive areas of peace and security; economic and social affairs; development cooperation; and humanitarian relief.

22. The Office also in March 1998 concluded a Memorandum of Understanding with the United Nations Development Programme (UNDP) on cooperation both in the field and at headquarters and established regular follow-up meetings on its effective implementation. This new cooperative arrangement between the Office and UNDP is perhaps the most important new development in this area. The detailed 33-paragraph Memorandum of Understanding defines this relationship which is designed to increase coordination, mutual support, efficiency and the effectiveness of the respective programmes.

23. In a time when demands for rule of law assistance are at an all-time high level, this cooperation on the part of the United Nations programme principally responsible both for assistance to strengthen national capacity and for system-wide coordination at the country level (UNDP), on the one hand, and the Office mandated to promote and protect human rights while providing system-wide coordination on matters relating to the rule of law and democracy, on the other, is a development of considerable import. This unprecedented internal merger of rule of law assistance resources will afford for the United Nations and its Member States seeking to enhance the rule of law, more efficient, readily available and effective rule of law assistance programming at the country level.

24. In particular, the Memorandum of Understanding sets out seven new points of agreement directly relevant to United Nations rule of law assistance: (a) cooperation in the design and implementation of projects at both the headquarters and country levels, and mutual assistance to countries in their incorporation into national development planning; (b) exchange of expertise in rule of law development to support national programmes; (c) development of joint projects of UNDP and the Office in this field; (d) mutual support to local human rights organizations; (e) provision by the Office of substantive inputs in the context of the UNDP Governance Component of the Special Initiative on Governance in Africa (SIGA); (f) the issuance of a public information paper prepared by UNDP and the Office on their joint technical cooperation (including rule of law) activities; and (g) consultation and cooperation in the implementation of the recommendations of the various world conferences and summits relating to human rights, democracy, development and the rule of law, etc.

25. Implementation of the agreement has already begun and is being facilitated by a joint task force established for the purpose. At the field level, one particularly innovative joint project of UNDP and the Office is now being implemented through a Regional Human Rights Programme Adviser based in southern Africa. The Adviser works closely with Governments and United Nations Resident Coordinators in the subregion with a view to advising and assisting-States on building national capacity for human rights and the rule of law.

26. Another notable development has recently resulted from discussions between the Office, the United Nations Centre for International Crime Prevention, the United Nations Children's Fund (UNICEF) and others with a view to closely coordinating assistance in the area of the administration of juvenile justice. Those discussions produced detailed Guidelines for Action on Children in the Criminal Justice System, which were adopted by the Economic and Social Council in its resolution 1997/30 of 21 July 1997, on the administration of juvenile justice. In that resolution the Council invited the Secretary-General to establish a coordination panel on technical advice and assistance in juvenile justice as foreseen in the guidelines. The panel is to consist of representatives of the Centre for International Crime Prevention, the Office of the United Nations High Commissioner for Human Rights, UNICEF, UNDP, other relevant United Nations organizations and interested regional and non-governmental organizations.

27. The High Commissioner is continuing the system-wide analysis of technical assistance provided by United Nations entities in areas related to human rights, democracy and the rule of law, which, with the cooperation of the various relevant United Nations entities, should be completed in 1998. The analysis will provide objective data necessary for the High Commissioner to identify areas of complementarity and duplication, to compare the competitive advantages and areas of focus of the various programmes and thereby to explore new modalities and synergies for the enhancement of system-wide support for the rule of law.

28. At the same time, direct consultations have been initiated between the High Commissioner and the World Bank, including on means to increase cooperation in rule of law development initiatives. Discussions at the headquarters level in this regard are being complemented by closer contacts at the field level, where rule of law projects are implemented.

29. The Office of the High Commissioner has also recently seconded staff specialized in this area to other United Nations offices for the purpose of coordinating rule of law assistance, most recently to the Office of the United Nations Special Coordinator in the Occupied Territories, where an adviser seconded by the High Commissioner worked with the Special Coordinator in coordinating a US$ 73 million rule of law development programme, involving 17 donors and 10 United Nations agencies and programmes, as well as the World Bank.

30. Each of these initiatives is ongoing and each has been accorded priority status by the High Commissioner in her efforts to improve the capacity of the Organization to support States seeking to promote the rule of law.

VIII. Policy and conclusions

31. The policy of the High Commissioner for Human Rights is to give priority to assisting developing countries (in particular the least developed countries) with a focus on countries in transition to democracy. Other important factors determining possible assistance that the Office provides to Member States at their request are: specific recommendations made by the United Nations human rights treaty bodies; recommendations by the Commission on Human Rights and its mechanisms, including the representatives of the Secretary-General, the special rapporteurs on thematic or country situations and the various working groups; the recommendations adopted by the Board of Trustees of the Voluntary Fund for Technical Cooperation in the Field of Human Rights (established pursuant to Commission on Human Rights resolution 1987/38); and the

views expressed by national human rights institutions and national and international NGOs.

32. The Office of the High Commissioner has recently initiated a process of discussion on aims and objectives for her office, which are to form the basis of its work programme for the medium term. Assistance in support of the rule of law figures prominently among those aims and objectives, as does the mainstreaming of human rights within the United Nations system, the advancement of economic, social and cultural rights, and the promotion of the right to development.

33. This is not a coincidental set of unrelated goals, but rather a natural outgrowth of the growing recognition within the Organization that the four goals are inextricably linked. As cited in the third preambular paragraph of the Universal Declaration of Human Rights a half-century ago, the rule of law is a vital element of conflict prevention. It remains, as well, the most effective guarantor of the realization of all human rights: civil, cultural, economic, political and social. It is widely recognized as a fundamental condition for sustainable human development. Support for the rule of law is thus a matter of relevance to each of the organizational units which collectively form the United Nations system.